

103^D CONGRESS
1ST SESSION

S. 1649

To amend title 38, United States Code, to make improvements in the procedures used by the Department of Veterans Affairs in adjudicating claims for veterans benefits, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 10 (legislative day, NOVEMBER 2), 1993

Mr. WELLSTONE introduced the following bill; which was read twice and referred to the Committee on Veterans' Affairs

A BILL

To amend title 38, United States Code, to make improvements in the procedures used by the Department of Veterans Affairs in adjudicating claims for veterans benefits, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; REFERENCES TO TITLE 38,**
4 **UNITED STATES CODE.**

5 (a) SHORT TITLE.—This Act may be cited as the
6 “Veterans Adjudication Procedures Act of 1993”.

7 (b) REFERENCES TO TITLE 38, UNITED STATES
8 CODE.—Except as otherwise expressly provided, whenever

1 in this Act an amendment or repeal is expressed in terms
 2 of an amendment to, or repeal of, a section or other provi-
 3 sion, the reference shall be considered to be made to a
 4 section or other provision of title 38, United States Code.

5 **SEC. 2. WORK RATE STANDARDS FOR ADJUDICATIVE EM-**
 6 **PLOYEES.**

7 (a) IN GENERAL.—(1) Chapter 7 is amended by add-
 8 ing at the end the following new section:

9 **“§ 713. Work rate standards for adjudicative employ-**
 10 **ees**

11 “(a) The Secretary shall provide that under the work
 12 rate standards that apply to employees of the Department
 13 who adjudicate claims for benefits that have been submit-
 14 ted to the Secretary, those employees do not receive credit
 15 for work on a claim until the decision on the claim be-
 16 comes final. Such a decision shall not be considered to
 17 have become final until the claimant has exhausted, or
 18 failed to timely exercise, the right to appellate review by
 19 the Board of Veterans’ Appeals.”.

20 (2) The table of sections at the beginning of such
 21 chapter is amended by adding at the end the following
 22 new item:

“713. Work rate standards for adjudicative employees.”.

23 (b) EFFECTIVE DATE.—Section 713 of title 38,
 24 United States Code, as added by subsection (a), shall
 25 apply with respect to claims for benefits that are submit-

1 ted to the Secretary of Veterans Affairs after the end of
 2 the 180-day period beginning on the date of the enactment
 3 of this Act.

4 **SEC. 3. ANNUAL REPORT ON STATUS OF CLAIMS FOR BENE-**
 5 **FITS.**

6 (a) IN GENERAL.—(1) Chapter 5 is amended by in-
 7 serting after section 529 the following new section:

8 **“§ 530. Annual report on status of claims for benefits**

9 “(a) The Secretary shall submit to Congress an an-
 10 nual report on the status of claims for benefits before the
 11 Department during the preceding fiscal year. The report
 12 for any fiscal year shall be submitted in conjunction with
 13 the report under section 7101(d) of this title for that year.

14 “(b)(1) Each report under subsection (a) shall sepa-
 15 rately set forth, with regard to claims for benefits in which
 16 a decision of the agency of original jurisdiction or the
 17 Board of Veterans’ Appeals became final during the pre-
 18 ceding fiscal year, the average number of days that passed
 19 from the date on which the claim was initially received
 20 by the Department until the following dates, as applicable:

21 “(A) The date on which the notice of decision
 22 was provided to the claimant, for those cases in
 23 which the claimant did not file a timely notice of dis-
 24 agreement (along with the number of such cases).

1 “(B) The date on which the statement of the
2 case was provided to the claimant, for those cases in
3 which the claimant filed a timely notice of disagree-
4 ment, and the agency of original jurisdiction did not
5 conduct a hearing, and the claimant did not file a
6 timely substantive appeal to the Board of Veterans’
7 Appeals (along with the number of such cases).

8 “(C) The date on which the statement of the
9 case was provided to the claimant or the date on
10 which the notice of the decision rendered after the
11 conduct of a hearing of the agency of original juris-
12 diction, whichever is later, for those cases in which
13 the claimant filed a timely notice of disagreement,
14 and agency of original jurisdiction conducted a hear-
15 ing, and the claimant did not file a timely sub-
16 stantive appeal to the Board of Veterans’ Appeals
17 (along with the number of such cases).

18 “(D) The date on which the notice of the Board
19 of Veterans’ Appeals decision was provided to the
20 claimant, for those cases in which the Board of Vet-
21 erans’ Appeals did not remand to the agency of
22 original jurisdiction before issuing its decision and
23 neither the agency of original jurisdiction nor the
24 Board of Veterans’ Appeals conducted a formal
25 hearing (along with the number of such cases).

1 “(E) The date on which the notice of the Board
2 of Veterans’ Appeals decision was provided to the
3 claimant, for those cases in which the agency of
4 original jurisdiction conducted a hearing, and the
5 Board of Veterans’ Appeals issued a decision on the
6 appeal of the claim without conducting a formal
7 hearing and without remanding the appeal to the
8 agency of original jurisdiction before issuing its deci-
9 sion (along with the number of such cases).

10 “(F) The date on which the notice of the Board
11 of Veterans’ Appeals decision was provided to the
12 claimant, for those cases in which the agency of
13 original jurisdiction conducted a hearing and the
14 Board of Veterans’ Appeals issued a decision on the
15 appeal of the claim after conducting a formal hear-
16 ing and without remanding the appeal to the agency
17 of original jurisdiction before issuing its decision
18 (along with the number of such cases).

19 “(G) The date on which the notice of the Board
20 of Veterans’ Appeals decision was provided to the
21 claimant, for those cases in which the agency of
22 original jurisdiction did not conduct a hearing, and
23 the Board of Veterans’ Appeals issued a decision on
24 the appeal of the claim after conducting a formal
25 hearing and without remanding the appeal to the

1 agency of original jurisdiction before issuing its deci-
2 sion (along with the number of such cases).

3 “(H) The date on which the notice of the Board
4 of Veterans’ Appeals final decision was provided to
5 the claimant, for those cases in which the Board of
6 Veterans’ Appeals did not conduct a formal hearing
7 and remanded the case on one or more occasions to
8 the agency of original jurisdiction before issuing its
9 final decision (along with the number of such cases).

10 “(I) The date on which the notice of the Board
11 of Veterans’ Appeals final decision was provided to
12 the claimant, for those cases in which the Board of
13 Veterans’ Appeals conducted a formal hearing and
14 remanded the case on one or more occasions to the
15 agency of original jurisdiction before issuing its final
16 decision (along with the number of such cases).

17 “(2) Each report under subsection (a) shall also set
18 forth the number of claims for benefits pending a final
19 decision as of the end of the fiscal year preceding the sub-
20 mission of the report.”.

21 (2) The table of sections at the beginning of such
22 chapter is amended by inserting after the item relating
23 to section 529 the following new item:

“530. Annual report on status of claims for benefits.”.

24 (b) EFFECTIVE DATE.—(1) Section 530 of title 38,
25 United States Code, as added by subsection (a), shall

1 apply only with respect to claims for benefits that are re-
 2 ceived by the Secretary of Veterans Affairs more than 180
 3 days after the date of the enactment of this Act.

4 (2) The Secretary of Veterans Affairs shall submit
 5 the first annual report under subsection (a) of such sec-
 6 tion 530, as so added, for the third fiscal year ending after
 7 the date of the enactment of this Act.

8 **SEC. 4. OFFICIALS DETERMINING ORIGINAL AND RE-**
 9 **OPENED CLAIMS FOR BENEFITS.**

10 (a) IN GENERAL.—Subchapter I of chapter 51 is
 11 amended by adding at the end the following new section:

12 **“§ 5109A. Officials acting on behalf of the Secretary**

13 “(a) The functions of the Secretary under this chap-
 14 ter in making determinations on a claim for benefits filed
 15 under this chapter shall be carried out in each case by
 16 a single official (known as a ‘rating official’). A single rat-
 17 ing official (rather than a board of officials) shall make
 18 the initial determination of the Secretary on all original
 19 and reopened claims filed with the Secretary.

20 “(b) Whenever a hearing is requested following a de-
 21 cision of a rating official denying (in whole or in part)
 22 a claim for benefits, the official who conducts the hearing
 23 shall make a determination in the case without referring
 24 the case back to the rating official who initially decided
 25 the case (or another rating official) and shall issue a deci-

1 sion on the case in the manner prescribed in section 5104
2 of this title.”.

3 (b) CLERICAL AMENDMENT.—The table of sections
4 at the beginning of such chapter is amended by inserting
5 after the item relating to section 5109 the following new
6 item:

“5109A. Officials acting on behalf of the Secretary.”.

7 **SEC. 5. BOARD OF VETERANS’ APPEALS PROCEDURES.**

8 (a) TERMINATION OF ACTION BY BVA THROUGH
9 SECTIONS.—(1) Sections 7102 and 7103 are amended to
10 read as follows:

11 **“§ 7102. Decisions by the Board**

12 “A proceeding instituted before the Board shall be
13 assigned to an individual member of the Board (other than
14 the Chairman). A member who is assigned a proceeding
15 shall make a determination thereon, including any motion
16 filed in connection therewith. The member shall make a
17 report under section 7104(d) of this title on any such de-
18 termination, which report shall constitute the member’s
19 final disposition of the proceeding.

20 **“§ 7103. Reconsideration; correction of obvious errors**

21 “(a) The decision of the member of the Board deter-
22 mining a matter under section 7102 of this title is final
23 unless the Chairman orders reconsideration of the case.
24 Such an order may be made on the Chairman’s initiative
25 or upon motion of the claimant.

1 “(b) If the Chairman orders reconsideration in a
 2 case, the case shall upon reconsideration be heard by a
 3 section of the Board. Any such section shall consist of not
 4 less than three members of the Board (and may include
 5 the Chairman). The member of the Board who made the
 6 decision under reconsideration may not serve as a member
 7 of the section.

8 “(c) When a case is heard by a section of the Board
 9 after such an order for reconsideration, the decision of a
 10 majority of the members of the section shall constitute the
 11 final decision of the Board.

12 “(d) The Board on its own motion may correct an
 13 obvious error in the record, without regard to whether
 14 there has been a motion or order for reconsideration.”.

15 (2) The items relating to sections 7102 and 7103 in
 16 the table of sections at the beginning of chapter 71 are
 17 amended to read as follows:

“7102. Decisions by the Board.

“7103. Reconsideration; correction of obvious errors.”.

18 (b) CONFORMING AMENDMENTS.—(1) Section 7110
 19 is amended by striking out “section” both places it ap-
 20 pears and inserting in lieu thereof “member”.

21 (2)(A) The heading of section 7110 is amended to
 22 read as follows:

1 **“§ 7110. Traveling members”.**

2 (B) The item relating to section 7110 in the table
3 of sections at the beginning of chapter 71 is amended to
4 read as follows:

“7110. Traveling members.”.

5 **SEC. 6. REVISION OF DECISIONS BASED ON CLEAR AND UN-**
6 **MISTAKABLE ERROR.**

7 (a) ORIGINAL DECISIONS.—(1) Chapter 51 is amend-
8 ed by inserting after section 5109A, as added by section
9 4, the following new section:

10 **“§ 5109B. Revision of decisions on grounds of clear**
11 **and unmistakable error**

12 “(a) A decision by the Secretary under this chapter
13 is subject to revision on the grounds of clear and unmis-
14 takable error. If evidence establishes the error, the prior
15 decision shall be reversed or revised.

16 “(b) For the purposes of authorizing benefits, a rat-
17 ing or other adjudicative decision that constitutes a rever-
18 sal or revision of a prior decision on the grounds of clear
19 and unmistakable error has the same effect as if the rating
20 or decision had been made on the date of the prior deci-
21 sion.

22 “(c) Review to determine whether clear and unmis-
23 takable error exists in a case may be instituted by the Sec-
24 retary on the Secretary’s own motion or upon request of
25 the claimant.

1 “(d) A request for revision of a decision of the Sec-
 2 retary based on clear and unmistakable error may be made
 3 at any time after that decision is made.

4 “(e) Such a request shall be submitted to the Sec-
 5 retary and shall be decided in the same manner as any
 6 other claim.”.

7 (2) The table of sections at the beginning of such
 8 chapter is amended by inserting after the item relating
 9 to section 5109A, as added by section 4, the following new
 10 item:

“5109B. Revision of decisions on grounds of clear and unmistakable error.”.

11 (b) BVA DECISIONS.—(1) Chapter 71 is amended by
 12 adding at the end the following new section:

13 **“§ 7111. Revision of decisions on grounds of clear and**
 14 **unmistakable error**

15 “(a) A decision by the Board is subject to revision
 16 on the grounds of clear and unmistakable error. If evi-
 17 dence establishes the error, the prior decision shall be re-
 18 versed or revised.

19 “(b) For the purposes of authorizing benefits, a rat-
 20 ing or other adjudicative decision of the Board that con-
 21 stitutes a reversal or revision of a prior decision of the
 22 Board on the grounds of clear and unmistakable error has
 23 the same effect as if the rating or decision had been made
 24 on the date of the prior decision.

1 “(c) Review to determine whether clear and unmis-
2 takable error exists in a case may be instituted by the
3 Board on the Board’s own motion or upon request of the
4 claimant.

5 “(d) A request for revision of a decision of the Board
6 based on clear and unmistakable error may be made at
7 any time after that decision is made.

8 “(e) Such a request shall be submitted directly to the
9 Board and shall be decided by the Board on the merits,
10 without referral to any adjudicative or hearing official act-
11 ing on behalf of the Secretary.

12 “(f) A claim filed with the Secretary that requests
13 reversal or revision of a previous Board decision due to
14 clear and unmistakable error shall be considered to be a
15 request to the Board under this section, and the Secretary
16 shall promptly transmit any such request to the Board for
17 its consideration under this section.”.

18 (2) The table of sections at the beginning of such
19 chapter is amended by adding at the end the following
20 new item:

“7111. Revision of decisions on grounds of clear and unmistakable error.”.

21 (c) EFFECTIVE DATE.—(1) Section 5109B and 7110
22 of title 38, United States Code, apply to any determination
23 made before, on, or after the date of the enactment of
24 this Act.

1 (2) Notwithstanding section 402 of the Veterans Ju-
2 dicial Review Act (38 U.S.C. 7251 note), chapter 72 of
3 title 38, United States Code, shall apply with respect to
4 any decision of the Board of Veterans' Appeals on a claim
5 alleging that a previous determination of the Board was
6 the product of clear and unmistakable error if that claim
7 is filed after, or was pending before the Department of
8 Veterans Affairs, the Court of Veterans Appeals, the
9 Court of Appeals for the Federal Circuit, or the Supreme
10 Court on the date of the enactment of this Act.

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